IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No.855 of 2006

Date of decision: 8th December, 2006

Ghanshyam ….. Petitioner

Versus

State of H P & another …. Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta,J.

The Hon'ble Mr.Justice S S Thakur,J.

Whether approved for reporting ?[1]

For the Petitioner : Mr G R Palsra, Advocate.

For the Respondent:

Deepak Gupta,J. (Oral)

Admittedly the petitioner filed a Civil Suit in the Court of learned Civil Judge, Junior Division, Court No.II, Mandi, District Mandi, in which he had prayed for permanent prohibitory injunction, restraining the defendants (respondents herein) from constructing a road through a major portion of the land, comprised in Khasra No.24

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

measuring 18-1-3 bighas in village *Magar* Tehsil Sadar, District Mandi (HP). The plaintiff has also sought mandatory injunction directing the defendants to restore the suit land to its original position, in case the defendants succeed in constructing the road over a major portion of the suit land. This suit has been dismissed by the learned trial court on the ground that the road stood constructed prior to institution of the civil proceedings. The learned trial court dismissed the suit on 27th September, 2005. Against this judgment and decree of the learned trial court, the petitioner-plaintiff filed an appeal before the learned District Judge, Mandi. It is also admitted by Mr Palsra, learned counsel for the petitioner that in the said appeal, the petitioner-plaintiff has obtained stay order against the respondent-State.

By means of the present writ petition, the petitioner has prayed that the respondents be directed to acquire the suit land on which the road has been forcibly constructed by them. When the matter was taken up for admission today, Mr Palsra, learned counsel was asked to exercise his option, either to pursue the matter

before the civil courts or pursue the present matter before this Court in writ jurisdiction.

We are of the considered view that both the proceedings cannot be permitted to go on simultaneously. On the one hand in the Civil Suit the petitioner-plaintiff claims that he is owner of the land and wants the respondents-State to be restrained from constructing the road and has also prayed for mandatory injunction that in case the road is constructed, the respondent-State be asked to remove the construction and restore the suit land to its original position and on the other hand by means of the present writ petition the petitioner wants that the State should pay him compensation, for the land used for the construction of road. Since the petitioner is not willing to withdraw the proceedings before the learned court below, he cannot be permitted to continue with two proceedings with regard to the same land simultaneously. Since, the petitioner has not chosen to withdraw the proceedings before the learned Court below, we have no option but to dismiss the writ petition and leave the petitioner to pursue his remedy before the civil court.

The writ petition is accordingly dismissed.

CMP No.1362 of 2006.

In view of the dismissal of the writ petition, this application does not survive and stands dismissed accordingly.

(Deepak Gupta),J.

December 8, 2006 (S S Thakur),J.
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